



# Scott County

## Board of Adjustment

January 9<sup>th</sup>, 2016

6:30PM

**Scott County Government Center**

**County Board Room**

**200 Fourth Avenue West**

**Shakopee, MN**



**SCOTT COUNTY  
BOARD OF ADJUSTMENT**

**Scott County Government Center  
200 Fourth Avenue West  
Shakopee, Minnesota**

**Monday, January 09, 2017  
County Board Room at 6:30 PM**

- I. ROLL CALL AND INTRODUCTIONS
- II. APPROVAL OF NOVEMBER 14, 2016 MINUTES
- III. ELECTION OF OFFICERS
- IV. GENERAL & ADJOURN



**SCOTT COUNTY  
BOARD OF ADJUSTMENT**

**Scott County Government Center  
200 Fourth Avenue West  
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**Monday, November 14, 2016  
County Board Room at 6:30 PM**

**I. ROLL CALL AND INTRODUCTIONS**

Chair Hartmann opened the meeting at 6:30PM with the following members present: Barbara Johnson, Gary Andersen, Gary Hartmann, Ed Hrabe, and Lee Watson. Ray Huber and Thomas Vonhof were absent.

**County Staff Present:** Planning Manager, Brad Davis; Zoning Administrator, Marty Schmitz; Senior Planner, Greg Wagner; Property Tax and Customer Services Manager, Cindy Geis; Code Compliance Officer, Dan Ekholm; Assistant County Attorney, Steve Ott, SWCD Resource Conservationist, Scott Schneider; and Deputy Clerk to the Board, Dianna Gerold.

**II. APPROVAL OF October 10, 2016 BOARD OF ADJUSTMENT MINUTES**

**On a motion by Commissioner Hrabe, second by Commissioner Watson the minutes for the October 10, 2016 Board of Adjustment meeting were approved as written and distributed.**

**The motion carried on a vote of four (4) and Commissioner Barbara Johnson abstained from voting on this item on the agenda.**

**III. 6:30PM Wiley Vogt Appeal of Zoning Department Decision**

- A. Appeal of the Zoning Department Decision to issue Roger Breeggemann a Certificate of Compliance to increase the number of animal units kept on his property.

Zoning Administrator, Marty Schmitz presented. A feedlot has been operating on Roger Breeggemann's property for a long time (50+ years). In 1998, Roger's father rezoned 80 acres of the farm including the farmstead to a Residential Cluster zoning district (this zoning district is no longer in the County ordinance). This rezoning and plat created the lot division that is in place today. They created four residential lots (less than 5 acres in size) north of the original Breeggemann farmstead. The plat also created four agricultural parcels (10+ acres in size including the Breeggemann farmstead). In 1998, when the property was rezoned and platted, there was no discussion in the Planning Staff Report or official minutes of the Planning Commission public hearing informing Mr. Breeggemann that he would need to limit the size of the feedlot on his platted 10 acres parcel.

Roger Breeggemann took over the feedlot operation from his father in 1999, and he continued operating the feedlot. In 2008, Scott County received a complaint regarding the number of animal units being kept on the Breeggemann property. The complaint and ensuing investigation resulted in a Settlement Agreement between Roger Breeggemann and the County in 2009. The settlement agreement included conditions related to manure removal, fly control and the use of Zumbro Court – a township road.

In 2010, an update to the Zoning Ordinance permitted land owners on parcels less than 40 acres to increase the number of animal units kept on the parcel through a Certificate of Compliance. The Certificate of Compliance is subject to staff review and approval of a manure management plan.

Following additional complaints regarding the management of Mr. Breeggemann's feedlot, Mr. Breeggemann submitted an application for the Certificate of Compliance to increase number of animal units on the property. He also:

- Submitted a manure management plan and agreement to spread the manure on Tim Breeggemann's land.
- This application and information was reviewed by Scott Schneider (Resource Conservationist, Scott Soil and Water Conservation) and it was found to be complete.
- Louisville Township recommended approval of the Certificate of Compliance and the attached conditions.

Based on the review and comments provided by the Scott Soil and Water Conservation District, Louisville Township, and County Staff review of the application per the requirements in the Zoning Ordinance, on August 3, 2016 County staff issued the Certificate of Compliance to allow Roger Breeggemann to operate a cattle operation of 78 animal units subject to eight conditions

Wiley Vogt - through his attorney Mark Thieroff, Siegel Brill PA - appealed staff's decision to issue the Certificate of Compliance. The appeal and requested changes to the administrative permit could be narrowed into several categories:

- Weekly removal of the manure;
- Spraying for flies should require the spraying of the entire parameter of each structure on the property, including garages;
- Restrictions to using the Township road (Zumbro Court).

Chair Hartman asked Mr. Thieroff: do you know what kind of flies these are? Was there a study done? Is there is no fly expert on this topic? Mr. Thieroff responded by saying, No, I don't believe so. Chair Hartman asked Mr. Thieroff: How do you know the flies are coming from his manure? Mr. Thieroff responded by saying he only knows what his client has stated.

Chair Hartman mentioned from on-line research through a University of Minnesota website, a house fly can fly up to 20 miles. Chair Hartman said when he drove around that part of the County he saw farm after farm, cattle, and feed lots within miles around this site. So, he has a hard time following this fly thing.

Mr. Thieroff responded that he is not an expert on flies. Mr. Thieroff said the County Staff in 2008 concluded that it was reasonable and appropriate to require the Applicant to provide fly control measure for these adjoining property owners which included spraying for flies. Staff has acknowledged the need for fly control.

There was an additional question from the Commissioners asking "who hired the fly sprayer"? Mr. Thieroff said Mr. Roger Breeggemann has been hiring the fly sprayer.

Mr. Scott Schneider, Resource Conservationist for Scott Soil and Water Conservation provided information relating to the manure management plan. The original settlement agreement had weekly removal of manure, and Mr. Schneider was really surprised, because it isn't very practical for people that are growing crops in their field during the growing season. When you are growing crops with typical MPCA rules, regulations and guidelines they allow a temporary manure stockpile site for one year, and then they can either move the stockpile or it can stay in the same spot. From a SWCD perspective after reviewing the plan, Mr. Schneider said he thought it was a good plan, and it complies with state law and is a very typical practice to be doing.

The manure spreading agreement Mr. Schneider reviewed is very typical for Administrative and Conditional Use permits. Tim Breeggemann has agreed to take the manure. In having an agreement they agree to spread on their land owned and rented because typically when a farmer operates a piece of land he controls and makes the agronomic decisions for the property.

Mr. Schneider said he did the calculations and Mr. Breeggemann is fine with the amount of acreage combining Tim and Roger Breeggemann's land. Mr. Schneider stated this is typical of what we see. Mr. Breeggemann did fill out the MPCA registration form for feedlots and manure storage areas. He has a smaller operation and does not have a large volume of manure. The MPCA usually looks at larger operations, they want to monitor where the manure goes.

Commissioner Watson asked about the accumulation of manure during the crop growing season? What happens to it during that time of year? Mr. Schneider answered that it is stockpiled near the south property line.

Commissioner Watson asked if the manure accumulated in tons or thousands of pounds? Mr. Schneider responded by saying "tons". Commissioner Watson asked if that is normal operating procedure? Mr. Schneider responded by saying "yes".

Commissioner Watson asked if Mr. Breeggemann has to do anything with regard to containing the manure? Mr. Schneider said Mr. Breeggemann has to ensure that there is not runoff contaminating the water of the State. Commissioner Watson asked Mr. Schneider: "you've reviewed it and you are comfortable with it?" Mr. Schneider responded "Yes, I reviewed the site, and that is one of the better spots on the property to put it. In addition, it is the furthest away from the other landowners".

Chair Hartmann asked if it is typical to have a manure management plan recorded document like a mortgage document. Mr. Schneider answered no, the manure agreement is not recorded. The manure agreement is a living document because a farmer could gain land, lose some land; also he may change crops from year to year. The manure is rotated on your fields to provide the best fertilization of your crops, and typically these agreements are not recorded.

Marty Schmitz explained, historically, the County does not include a fly control condition in a certificate of compliance. In other permits the County has issued to increase animal units, the County has never had to include a condition for fly control. This requirement for fly control on adjacent properties was an attempt to try to reasonably address the issues of flies. There is no standard or requirement in the ordinance for fly control.

Steve Ott, Assistant County Attorney provided his insight relating to the manure agreement. First, Mr. Ott said Tim Breeggemann has the benefit of getting the manure and nutrients spread on his land. Second, Mr. Ott said the staff report contains a thorough analysis not just of the word "shall", but of that provision of the ordinance 9.2.3 in its entirety. Mr. Ott said "If you look at the ordinance in its entirety it is not directed towards the agreement it is directed towards a manure management plan which has been approved. You have that in this case. Staff need only ask Mr. Roger Breeggemann or Tim Breeggemann if there is adequate land to spread the manure. We are not required to ask for any verification what so ever."

Mr. Ott said staff was very thorough by asking for a manure management agreement and also had the agreement reviewed by Scott Soil and Water Conservation, who agreed it was typical of what they see. Mr. Ott said the SWCD has also indicated there was benefit to having flexibility so you are not always spreading manure over the same areas.

Mr. Ott said regarding the landlord versus tenant issue, that is pure speculation at this point because there is nothing in the record that suggested the tenant's right are limited. As indicated from the provisions of the ordinance the focus is on the manure management plan, Mr. Ott said the County wouldn't even need to inquire if Tim Breeggemann was a tenant or owner.

Mr. Ott said the Settlement agreement came as a result of criminal charges where the State brought Criminal Charges using the power of the court, the maximum penalty of 90 days in jail or \$1,000 fine, using the maximum penalty of one (1) year probation, and the in this case you have settlement agreement in front of you and when it was dated. The maximum probation would be one year from the date of the settlement. And you have from that point in time until January, 2016 with these complaints of compliance, so I would consider that as well. There is a least some suggestion that the settlement agreement should continue on in perpetuity and that would be like putting someone on probation for a misdemeanor offense for infinity and that is not reasonable or appropriate, noted Mr. Ott.

Mr. Ott said: what is required, are their concerns and do the conditions have a reasonable, rational relationship supported by the facts in the record to support that and given the presentations and the Staff reports. Mr. Ott said: I think the Board has enough information to make a decision.

Commissioner Watson asked a question regarding the number of animals on Mr. Breeggemann's property. Was it 78 or 90? Mr. Schneider said there were 78 animal units of 1,000 pounds. The actual number of animals would fluctuate, but the combined weight would be equal or less than 78,000 pounds.

Commissioner Johnson made some comments relating to the fly issue. They do make an attempt to spray around the adjacent property owners, but we don't have proof the flies are always coming from the Breeggemann property. If someone is unhappy with the flies, perhaps they should take some initiative and do some spraying on their own.

Mr. Roger Breeggeman addressed the fly issue. Of the four adjacent properties to the north, three of the property owners do not want me to spray. The only one who wants the spraying is Mr. Vogt. The flies really aren't that bad. You have the years where flies are worse or better, and it is part of living in the country. The flies can come from 25 miles away.

Commissioner Watson had a number of questions, First, how long has your family been operating feedlot at this location? Mr. Breeggemann responded since 1959. Second, are you running about 90 head since that time or does it fluctuate. Mr. Breeggemann answered: we do not have as many animals on that farm as when I was a child.

Commission Johnson asked if the adjacent farms also have livestock. Mr. Breeggemann answered: Yes, all of the farms adjacent to his property have livestock.

Commissioner Hartman asked about the fly spraying process. Mr. Breeggemann said they spray around the parameters of the property, the buildings, the doors and windows.

Commission Watson asked if Mr. Breeggemann resided on that property. "Yes, I do," responded Mr. Breeggemann.

John Weckman with the Louisville board addressed the topic of the Township road. This came up a few years ago. Mr. Weckman said he approached the Township Attorney, Bob Ruppe, on this matter. Zumbro court is a township road and the town board has jurisdiction over the road and makes decisions regarding the road. Mr. Weckmann said the town board is not going to put any conditions such as cover trailers or feed wagons on it.

**Chair Hartmann opened the meeting to the public for comments.**

Mr. Bob Pieper, a neighbor of Roger Breeggemann's said that flies have travelled to their area coming as far as Kentucky.

The Commissioners made a motion on the request.

**Motion by Commissioner Waton to affirm Staff in their decision to issue Roger Breeggemann a Certificate of Compliance to increase the number of animal units kept on his property and amended Condition number five (5) to remove the requirement that Mr. Breeggemann provide fly control on adjacent properties; second by Commissioner Barbara Johnson.**

**The motion carried on a vote of five (5) ayes.**

Below are the revised conditions of the Certificate of Compliance:

1. The applicant, Roger Breeggemann will maintain an active agreement with Tim Breeggemann to utilize owned and rented land for manure management purposes.
2. There shall be no more than seventy-eight (78) animal units located upon the applicant's property.
3. The Applicant shall send an annual statement in January of each year to the Scott County Zoning Administration confirming there is still an active agreement for the stockpiling and spreading of manure with Tim Breeggemann. The yearly statement shall also include the total number of animal units located upon the applicant's property.
4. The applicant shall have an active feedlot permit issued by the MPCA and shall be compliant with all MPCA rules and regulations related to feedlot and manure management.
5. A fly control plan to be included with the permit. The applicant shall apply fly control on their property and shall provide fly control to the neighbors that request treatment. Fly control should be applied no less than one (1) time per month during the months of April through October. ~~Fly control is subject to the applicators schedule; however the applicant shall give reasonable notice to all adjacent neighbors as to when to expect treatment. The applicant shall not be responsible for providing neighboring landowners with alternative application scheduling when reasonable advance notice was provided, nor shall the applicant be liable for additional costs incurred as a result of rescheduled applications.~~
6. Manure from the open lot areas where animal manure accumulates at 1575 Zumbro Court shall be scraped and removed a minimum of once every two weeks and shall be stockpiled in a location approved by the SWCD. The manure from the stockpile site(s) shall be land applied at accepted agronomic rates on land specified for spreading in the manure management plan to insure all manure from all stockpile sites is completely removed on an annual basis.
7. Any changes to the cattle operations shall be communicated prior to effecting such change to Scott County Zoning Administration Department and the SWCD for approval.
8. The permit is subject to inspection by the County, Township and SWCD during normal business hours and any violation of the above conditions of this permit would be subject further enforcement and/or permit revocation.

#### **IV: GENERAL & ADJOURN**

**Motion by Commissioner Johnson to adjourn the Board of Adjustment meeting;  
Second by Commissioner Watson.**

**Motion carried on a vote of five (5) ayes.**

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**Gary A. Hartmann**  
**Chair of the Board of Adjustment**

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**Date**

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**Deputy Clerk to the Board**

DRAFT



# **ELECTION OF OFFICERS**

## **Board of Adjustment 2016**

Election of officers will proceed as follows:

### **Gary Hartmann – Board of Adjustment Meeting**

- Open nominations for Chair of Board of Adjustment
- Nominate
- Ask three (3) times “are there any other nominations”
- Motion to close nominations
- Close nominations for Chair of Board of Adjustment
- Vote on nominations for Chair of Board of Adjustment
- Announce new Chair and vote count

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- Open nominations for Vice-Chair of Board of Adjustment
  - Nominate
  - Ask three (3) times “are there any other nominations”
  - Motion to close nominations
  - Close nominations for Vice-Chair of Board of Adjustment
  - Vote on nominations for Vice-Chair of Board of Adjustment
  - Announce new Vice-Chair and vote count

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- Open nominations for Secretary of Board of Adjustment
  - Nominate
  - Ask three (3) times “are there any other nominations”
  - Motion to close nominations
  - Close nominations for Secretary of Board of Adjustment
  - Vote on nominations for Secretary of Board of Adjustment
  - Announce new Secretary and vote count

Planning Advisory Commission meeting follows.